

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CAREPARTNERS, LLC, et al.,

Plaintiffs,

v.

PAT LASHAWAY, Director of Residential  
Care Services for the Washington State  
Department of Social and Health Services,  
et al.,

Defendants.

CASE NO. C05-1104JLR

ORDER

**I. INTRODUCTION**

This matter comes before the court on Defendants' motion for a more definite statement under Fed. R. Civ. P. 12(e) (Dkt. # 5). Neither party has requested oral argument, and the court has reviewed the motion together with all documents filed in support and in opposition. For the reasons stated below, the court GRANTS Defendants' motion.

**II. BACKGROUND**

On July 11, 2003, the Washington Department of Social and Health Services ("DSHS") summarily suspended the operating license for Alderwood Assisted Living ("Alderwood"). Plaintiffs Joseph and Laura KilKelly own and operate Alderwood under their umbrella company, CarePartners, LLC ("CarePartners"). The DSHS suspension

1 required Plaintiffs to remove Alderwood's 55 residents from the facility within three  
2 days.

3 On June 17, 2005, Plaintiffs filed this action. They alleged that the Defendants,  
4 ten DSHS officers, are liable under 42 U.S.C. § 1983 ("Section 1983") for violating  
5 Plaintiffs' procedural and substantive due process rights and their rights under the First  
6 Amendment. Plaintiffs also stated a cause of action for tortious interference with their  
7 business relationships.

8 In the instant motion, Defendants announce their intent to assert a defense of  
9 qualified immunity. They claim that Plaintiffs' complaint is insufficiently detailed to  
10 permit them to assert this defense in advance of discovery, and thus seek a more definite  
11 statement under Fed. R. Civ. P. 12(e) ("Rule 12(e)").

### 12 III. ANALYSIS

#### 13 A. Defendants Have a Limited Opportunity to Assert Qualified Immunity Before 14 Discovery Begins.

15 Section 1983 creates a remedy for individuals against persons who violate their  
16 constitutional rights while acting under color of state law. 42 U.S.C. § 1983. Defendants  
17 faced with a § 1983 claim may assert a qualified immunity defense. Procunier v.  
18 Navarette, 434 U.S. 555, 561-3 (1978) (discussing the availability of qualified immunity  
19 generally).

20 Qualified immunity is not merely a defense to liability under Section 1983, it is an  
21 "entitlement not to stand trial or face the other burdens of litigation." Saucier v. Katz,  
22 533 U.S. 194, 200 (2001) (quoting Mitchell v. Forsythe, 472 U.S. 511, 526 (1985)).  
23 Accordingly, trial courts must resolve immunity questions at the earliest possible stage of  
24 litigation in order to protect defendants from potentially unnecessary and burdensome  
25 discovery proceedings. Harlow v. Fitzgerald, 457 U.S. 800, 817-8 (1982); Kwai Fun  
26 Wong v. U.S., 373 F.3d 952, 956-7 (9th Cir. 2004) ("[G]overnment officials are entitled  
27 to raise the qualified immunity defense immediately, on a motion to dismiss the  
28

1 complaint, to protect against the burdens of discovery . . .”). In a typical civil rights case,  
2 the district court first decides on a motion to dismiss whether the facts alleged, assumed  
3 to be true, yield the conclusion that defendant is entitled to immunity. Butler v. San  
4 Diego Dist. Attorney’s Office, 370 F.3d 956, 963 (9th Cir. 2004) (citing Fed. R. Civ. P.  
5 12(b)(6)). If the defendant is entitled to immunity, the court permits no further discovery  
6 and dismisses the case. Id. at 964. If, however, a plaintiff passes this initial hurdle, he or  
7 she is entitled to enough discovery to permit the court to rule on a defendant’s subsequent  
8 summary judgment motion. Id. (internal citations omitted).

9  
10 Without sufficient factual allegations from which to determine the scope of the  
11 constitutional rights at stake, it is impossible for a defendant or court to address the  
12 qualified immunity defense. Saucier, 533 U.S. at 200 (“[T]he first inquiry must be  
13 whether a constitutional right would have been violated on the facts alleged . . .”). A civil  
14 rights plaintiff, however, need only satisfy the “short and plain statement” requirement  
15 under Fed. R. Civ. P. 8(a)(2). Gomez v. Toledo, 446 U.S. 635, 639-40 (1980) (holding  
16 that a plaintiff’s complaint need not contain additional allegations in anticipation of the  
17 immunity defense). Thus, in order to address the immunity question at the earliest  
18 possible stage of litigation, a trial court has broad discretion to grant a Rule 12(e) motion  
19 as a tool to gain greater specificity as to plaintiff’s factual allegations that establish  
20 improper motive on the part of the defendant-officials. Crawford-El v. Britton, 523 U.S.  
21 574, 597-8 (1998).

22 **B. Defendants May Seek Greater Specificity as to Plaintiffs’ Constitutional**  
23 **Claims.**

24 The court grants Defendants’ motion for a more definite statement to resolve the  
25 qualified immunity questions at the earliest possible stage of this litigation. The court  
26 does not require Plaintiffs to file an amended complaint; rather, Defendants may  
27 propound, within ten (10) days of this order, no more than ten (10) contention  
28 interrogatories. Defendants may seek more specific allegations as to the constitutional

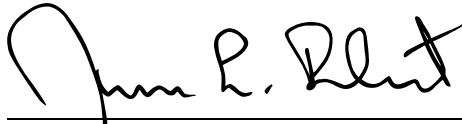
1 claims; Defendants may not, however, seek an evidentiary basis for the allegations.  
2 Moreover, the interrogatories may not relate to defenses other than qualified immunity,  
3 such as res judicata, collateral estoppel, or the Rooker-Feldman doctrine, also cited in  
4 Defendants' motion. Defendants shall serve Plaintiffs with the interrogatories within 10  
5 days of this order. Plaintiffs shall serve Defendants with the answers and objections, if  
6 any, within 30 days of service. Fed. R. Civ. P. 33. The court stays discovery as to the  
7 constitutional claims until further notice.<sup>1</sup>

#### 8 IV. CONCLUSION

9 For the foregoing reasons, the court GRANTS Defendants' motion for a more  
10 definite statement (Dkt. # 5), which Defendants may obtain through contention  
11 interrogatories.  
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13 Dated this 23rd day of September, 2005.

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JAMES L. ROBART  
United States District Judge

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<sup>1</sup>The court does not stay discovery as to the tortious interference claim as Defendants cite no authority, and the court is aware of none, that supports staying discovery on a tort claim.